

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAIIAN TELCOM, INC.)

DOCKET NO. 2008-0111

For Approval of Bandwidth.com CLEC,)
LLC's Adoption of Think 12)
Corporation Interconnection)
Agreement)

DECISION AND ORDER

RECEIVED

2008 JUL 22 A 8:21

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

2008 JUL 21 A 9:53

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAIIAN TELCOM, INC.)

Docket No. 2008-0111

For Approval of Bandwidth.com CLEC,)
LLC's Adoption of Think 12)
Corporation Interconnection)
Agreement)

DECISION AND ORDER

By this Decision and Order, the commission approves Bandwidth.com CLEC, LLC's ("Bandwidth.com") adoption of the negotiated interconnection agreement between HAWAIIAN TELCOM, INC. ("Hawaiian Telcom")¹ and Think 12 Corporation, dba Hello Depot ("Hello Depot"), as further described herein.

I.

Background

Hawaiian Telcom is a Hawaii corporation engaged in the provision of varied telecommunications services to its customers and the general public within the State of Hawaii ("State"). Hawaiian Telcom is an incumbent local exchange carrier,

¹Hawaiian Telcom was formerly known as Verizon Hawaii Inc., which in turn was formerly known as GTE Hawaiian Telephone Company, Incorporated.

as contemplated by Section 252 of the federal Telecommunications Act of 1996 (the "Act").²

Bandwidth.com is a limited liability company, with its principal place of business in Cary, North Carolina. It is a certified provider of local telecommunications services in the State.

A.

Application

By letter dated and filed on June 12, 2008, Hawaiian Telcom provided the commission with a letter dated May 7, 2008 ("Adoption Letter"), signed by representatives of Hawaiian Telcom and Bandwidth.com (collectively, the "Parties")³ evidencing Bandwidth.com's adoption of the negotiated interconnection agreement between Hawaiian Telcom and Hello Depot ("Interconnection Agreement"), pursuant to Section 252(i) of the Act and HAR § 6-80-54 ("Application"). As set forth in the Application, Bandwidth.com's adoption of the Interconnection Agreement is subject to the conditions set forth in the Adoption Letter. The commission construes Hawaiian Telcom's Application

²The Act amended Title 47 of the United States Code ("U.S.C."). Section references in this Decision and Order are, thus, to those in 47 U.S.C., as amended by the Act.

³A copy of Hawaiian Telcom's Petition, with its various attachments, was served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket, pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. No person moved to intervene or participate in this docket.

as a request for commission approval of Bandwidth.com's adoption of the Interconnection Agreement.

B.

Interconnection Agreement

The Interconnection Agreement was approved by the commission in Decision and Order No. 21126, filed on July 19, 2004, in Docket No. 04-0121 ("Decision and Order No. 21126"). Specifically, the commission found that the terms and conditions of the Interconnection Agreement do not discriminate against other telecommunications carriers and that the implementation of the Interconnection Agreement is consistent with the public interest, convenience, and necessity.⁴

The Adoption Letter sets forth, among other things, Bandwidth.com's adoption of the terms of the Interconnection Agreement, clarifies Hawaiian Telcom's position on various matters regarding the applicability of the Interconnection Agreement to the Parties, and indicates Bandwidth.com's acceptance of Hawaiian Telcom's various enumerated positions. Moreover, the Adoption Letter: (1) sets forth the terms that apply to the Parties, including Hawaiian Telcom's standard pricing schedule for interconnection agreements in the State, attached as Hawaii Appendix A; and (2) makes clear that the adoption of the Interconnection Agreement is only for services in Hawaii.

⁴See Decision and Order No. 21126, at 4.

C.

Consumer Advocate's Position

On July 1, 2008, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to approval of Bandwidth.com's adoption of the Interconnection Agreement ("Statement of Position"). The Consumer Advocate states that the terms, conditions and rates of the subject agreement are similar to other existing agreements previously approved by the commission.⁵

The Consumer Advocate notes that although Hawaiian Telcom contends that it does not provide the instant terms to Bandwidth.com as either a voluntary or negotiated agreement, either Party may utilize the dispute resolution process described in Section 14 of the agreement in the event of a dispute.⁶

In addition, the Consumer Advocate states that approving the request to adopt the agreement is in the public interest since it will promote competition in the telecommunications industry.⁷ The Consumer Advocate submits that the "agreement is necessary for Bandwidth.com to provide the facilities-based telecommunications services that [it] is

⁵See Statement of Position, at 3.

⁶See Statement of Position, at 3 and Hawaiian Telcom's Response to CA-IR-1a.

⁷See Statement of Position, at 4.

currently authorized under its [Certificate of Authority ("COA")]."⁸

II.

Discussion

Bandwidth.com's adoption of Hello Depot's Interconnection Agreement with Hawaiian Telcom is permitted under Section 252(i) of the Act, which states that:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

HAR § 6-80-54 requires all agreements regarding access, interconnection, unbundling, and network termination adopted by negotiation or arbitration be submitted to the commission for review and approval. The Interconnection Agreement is not an arbitrated agreement, but one that was negotiated and consummated by Hello Depot and Hawaiian Telcom. The Adoption Letter, signed by the Parties, is a negotiated contract between Bandwidth.com and Hawaiian Telcom. Accordingly, the commission considers the Interconnection Agreement, as adopted by the Adoption Letter, to be a negotiated interconnection agreement between the Parties and conducts its review under HAR § 6-80-54(b).

⁸Statement of Position, at 4.

HAR § 6-80-54 states:

(b) The commission shall approve or reject the agreement, with written findings as to any deficiencies. The commission may only reject:

(1) An agreement, or any portion of the agreement, adopted by negotiation if it finds that:

(A) The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or

(B) The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity;

Here, consistent with the commission's conclusions in Decision and Order No. 21126, the commission finds that the Interconnection Agreement, as adopted by the Adoption Letter, does not discriminate against other telecommunications carriers and that implementation of the agreement is consistent with the public interest, convenience, and necessity. The commission, moreover, recognizes that approval of the adoption of Hello Depot's Interconnection Agreement allows Bandwidth.com to provide telecommunications services in the State as authorized under its COA; thus, increasing competition in the State's telecommunications market.

Based on the foregoing, the commission concludes that Hawaiian Telcom's Application for commission approval of Bandwidth.com's adoption of the Interconnection Agreement, subject to the conditions set forth in the Adoption Letter, should be granted.

III.

Orders

THE COMMISSION ORDERS:

1. Bandwidth.com's adoption of the Interconnection Agreement between Hello Depot and Hawaiian Telcom, subject to the conditions set forth in the Adoption Letter, is approved under HAR § 6-80-54(b).

2. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii

JUL 21 2008

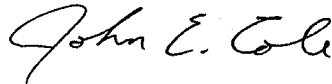
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By



Carlito P. Caliboso, Chairman

By:



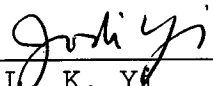
John E. Cole, Commissioner

APPROVED AS TO FORM:

By:



Leslie H. Kondo, Commissioner



Jodi I. K. Yi
Commission Counsel

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

HAWAIIAN TELCOM, INC.
WHOLESALE MARKETS
1177 Bishop Street
Honolulu, HI 96813

HAWAIIAN TELCOM, INC.
1177 Bishop Street
Honolulu, HI 96813
Attention: SVP - General Counsel

KADE ROSS
BANDWIDTH.COM CLEC, LLC
4001 Weston Parkway
Cary, NC 27513